IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.MC.No. 5828 of 2001

PETITIONER/ACCUSED:

T.S.PATTABHIRAMAN
PARTNER
KALYAN COLLECTIONS
NAICKANAL
THRISSUR

BY ADV. SRI.V.CHITAMBARESH
SRI.S.RAJEEV

RESPONDENTS/COMPLAINANT AND STATE

1. RAJU
MARAVATTICKAL HOUSE
P.O. CHETTUPUZHA
THRISSUR TALUK
THRISSUR DISTRICT

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM

BY PUBLIC PROSECUTOR AMJAT ALI
SRI.P.K.ASHOKAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 5828 of 2001

ORDER ON CRL.M.P.NO.4531 OF 2001
IN
CRL.M.C.NO.5828 OF 2001

Dismissed

Sd/-
A.K.BASHEER, JUDGE

26-11-2007

A.K.BASHEER, J.

- -

Crl.M.C.No.5828 OF 2001

- -

Dated this the 26th day of November 2007

ORDER

Petitioner who has been arraigned as accused in C.C.155/00 on the file of the Chief Judicial Magistrate's Court, Thrissur, has preferred this petition under Section 482 of the Code of Criminal Procedure seeking to quash the above proceedings.

2. It is seen from the lower court records that the learned Magistrate has issued process to the accused to answer the charge under Sections 193, 294(b), 323, 341 and 506(ii) of the Indian Penal Code.

3. It is contended by learned counsel for the petitioner that the learned Magistrate has taken cognizance of the offences alleged against the petitioner in a mechanical and casual manner without any application of the judicial mind. Learned counsel invites my attention to the fact that the learned Magistrate has issued summons to the petitioner for an offence punishable under Section 193 of the Indian Penal

Code as well, along with the other offences alleged in the complaint.

4. Curiously, the respondent/complainant has filed a statement before this court in which it has been categorically averred that he had no case that the accused had fabricated false evidence or had intentionally given false evidence in any judicial proceedings. According to the respondent "there was no occasion for such an allegation and it was an inadvertent omission that Section 193 was put in paragraph 12 of the complaint." Therefore, the respondent has prayed before this court that he does not want the trial court to take cognizance of the offence under Section 193 IPC. Reference has been made to the above aspect at the threshold itself only to indicate that there is some force in the contention raised by the petitioner that the learned Magistrate had not applied his mind at all while issuing summons to the petitioner/accused.

5. The case of the respondent/complainant, as revealed from Annexure-I complaint, was that he had been working as

Cashier in the establishment which was being run by the petitioner/accused. On June 28, 1999 at 4.30 pm, the complainant was summoned by the petitioner to his cabin. The accused informed the complainant that there was shortage of Rs.2,00,000/- in the accounts and there could not have such a shortage without the knowledge of the complainant. According to the complainant, the accused appeared to be very angry and he abused the complainant in filthy language. The accused slapped on his face and caught of his hair and hit on his head and kicked his abdomen with knee. At that time two other employees came over to the cabin of the petitioner and they also started to abuse the complainant. It was further alleged by the complainant that a promissory note was got prepared at the instance of the accused and the complainant was forced to sign the same. The wife of the complainant who was laid up due to a fracture on her leg was brought to the office at the instance of the accused at about 7.30 p.m. The accused pulled her hair and

she was pushed to the wall and threatened that unless the amount was paid, her husband (complainant) would be killed. Thus, she was also forced to sign in the promissory note. Thereafter, the complainant was asked to go to his residence and bring a cheque leaf. This direction was also complied with by the complainant out of fear and a cheque for a sum of Rs.2,50,000/- dated, August 16, 1999 was signed by the complainant at the instance of the accused. The further case of the complainant is that even thereafter the complainant and his wife were forced to remain in the cabin of the petitioner till midnight on that day.

6. The specific case of the complainant in Annexure-I complaint is that he and his wife had lodged a complaint before the Superintendent of Police, Thrissur, on August 9, 1999 (about two months after the alleged incident). But no action was taken on the same. Thereafter, the complainant mustered courage and filed Annexure-I complaint on October 22, 1999, after more than four months of the alleged incident.

7. I have carefully perused the complaint and also the sworn statements given by the complainant and his wife. It is true that this court should be circumspect and extremely careful while exercising inherent power vested in it under Section 482 of the Code of Criminal Procedure. As observed by their Lordships of the Supreme Court in **Punjab National Bank V. Surendra Prasad Sinha [AIR 1992 SC 1815]**, it is alway salutary that judicial proceedings should not be an instrument of oppression or needless harassment. Responsibility is cast on the Magistracy to ensure that all the relevant facts and circumstances are kept in view before issuing process. Their lordships further observed that "vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance." In **Pepsi Foods Limited V. Special Judicial Magistrate [1998 (5) SCC 749]**, their lordships thus:

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complaint to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

8. As noticed already, the learned Magistrate has issued summons to the petitioner even to face a charge under Section 193 IPC, which the complainant now terms as “an inadvertent omission”. A perusal of the entire complaint undoubtedly reveals that the wife of the complainant was also manhandled and she was forcibly confined in the cabin of the accused till midnight. But the complainant does not seem to have any grievance against the said alleged illegal acts.

9. Anyhow, I do not propose to go into that area of controversy at this stage, since it may be the wisdom of the complainant or the aggrieved person to choose or not to choose to prosecute the offender. But reference has been made to the above aspect only to show that there appears to be some force in the contention raised by the petitioner/accused that there was no proper application of mind at all by the learned Magistrate while issuing summons to him.

10. Having regard to the entire facts and circumstances, I am satisfied that this is a fit case in which the learned Magistrate has to be directed to consider the matter afresh and see whether process has to be issued to the petitioner and if so for what offences. Therefore, the order of the learned Magistrate issuing process to the petitioner is quashed. I hasten to add that I have not considered the merit of any of the contentions raised by the parties. It will be open to the respondent/complainant to adduce further evidence, if any, if he chooses to do so. The complainant shall appear before the court below on 12th January, 2008.

Crl.M.C. is disposed of as above.

(A.K.BASHEER, JUDGE)

jes

A.K.BASHEER, J.

- -

Crl.M.C.No.5828 OF 2001

- -

ORDER

Dated, 26th Nov. 2007